

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PAUL DAVID SCHMIDT,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-12-1194-W
)	
JANET DOWLING, Warden,)	
)	
Respondent.)	

Report and Recommendation

Mr. Paul David Schmidt seeks habeas relief, and the Court should transfer the action to the Eastern District of Oklahoma.

The Petitioner is challenging a conviction imposed in Wagoner County District Court, which is located in the Eastern District of Oklahoma. *See* 28 U.S.C. § 116(b). Mr. Schmidt is incarcerated at the James Crabtree Correctional Center, which is located in the Western District of Oklahoma. *See* 28 U.S.C. § 116(c). Under these circumstances, the Eastern and Western districts have concurrent jurisdiction over the habeas petition. *See* 28 U.S.C. § 2241(d). However, this Court enjoys discretion to transfer the action to the Eastern District of Oklahoma for hearing and determination. *See id.*

The Court should exercise this discretion and transfer the action to the Eastern District of Oklahoma. For a habeas petition which challenges the validity of the conviction, this district and the Eastern District of Oklahoma share the view that adjudication should ordinarily take place in the district where the conviction was obtained. This view is based,

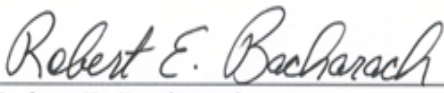
in part, on the shared belief that ordinarily the records and counsel will be available in the district where the prosecution took place. Under these circumstances, the undersigned recommends transfer of the action to the Eastern District of Oklahoma.

The parties are advised of their right to object to this report and recommendation by November 19, 2012. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a)(1)(C), 6(d), 72(b)(2). Any such objection must be filed with the Court Clerk for the United States District Court, Western District of Oklahoma. Failure to timely object would waive Mr. Schmidt's right to challenge the transfer in a subsequent appeal. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report terminates the referral.

The undersigned directs the Court Clerk to send the report and recommendation to the Petitioner and the Attorney General of Oklahoma. The copy for the Attorney General of Oklahoma is for informational purposes only.

Entered this 31st day of October, 2012.



Robert E. Bacharach
United States Magistrate Judge